# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 21040 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GOVINDRAJ BHOPALJI PUROHIT - Petitioner(s)**

**Versus**

**STATE OF GUJRAAT & 2 - Respondent(s)**

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**Appearance :**

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr.N.D.Gohil, AGP for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 18/11/2005**

## ORAL JUDGMENT

1.Govindbhai Bhopalji Purohit, petitioner has

filed this petition for issuance of writ of habeas corpus or any other appropriate writ, order or direction under Article 226 of the Constitution of India to quash and set aside the order of detention dated 23.6.2005 passed by the detaining authority i.e., District Magistrate, Ahmedabad as being illegal, invalid, arbitrary, suffers from total non-application of mind and violative of Articles 14, 21 and 22 of the Constitution of India.

2.The petition has been filed on 17.10.2005. When the matter was placed before this court (Coram : A.S.Dave, J) on 18.10.2005, this Court issued the Rule making it returnable after 4 weeks. In pursuance of the said order, the matter is placed before this Court for hearing today.

3.Mr.Prajapati, learned advocate appearing for the petitioner has invited my attention to the order of the detention dated 23.6.2005 and the grounds of detention supplied by the detaining

authority for detaining the petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985 (“the PASA Act” for short). From the grounds of detention, it reveals that the authority has relied upon the criminal case being Prohibition C.R.No.199 of 2005 registered at Sanand Police Station for the offence under Sections 66(1)(b), 65(A)(E), 116(b) and 81 of the Bombay Prohibition Act. In view of the aforesaid incident, the detaining authority has passed the detention order in exercise of the powers under Sub-Section 1 of Section 3 of the PASA Act with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of the public order.

4.It is stated that the offence was committed on 10.6.2005 and the muddammal recovered was of 60 bottles of Derby Special Whisky which is valued at Rs.24,000/-, 12 bottles of Macdole Whisky which is valued at Rs.4800/-, 1152 bottles of

Aristrocrat Whisky Kwotaria which is valued at Rs.1,15,200/- and Qualis car which is valued at Rs.4,00,000/-. It is stated that the action under the ordinary law is found insufficient and to curb the activities of the petitioner and to maintain the public order and public health, the impugned order has been passed against the petitioner.

5.The petitioner has challenged the impugned order on various grounds.

6.Learned advocate for the petitioner has submitted that the alleged activity of the petitioner cannot be said to be the activities which falls within the purview of the definition of bootlegger as defined under Section 2(B) of the PASA Act. Learned advocate for the petitioner has further submitted that the petitioner was in custody at that time and there was no cogent material before the detaining authority to draw a conclusion that the petitioner is likely to be released on bail

in near future. Therefore, the subjective satisfaction of the detaining authority for passing the detention order gets vitiated. It is therefore, requested to quash and set aside the impugned order.

7.On the other hand, Mr.N.D.Gohil appears for the respondent State and the detaining authority. He has relied upon the order of detention and the grounds stated therein. It may be noted that the detaining authority has not filed any affidavit in this behalf.

8.I have considered various contentions of the petitioner in this behalf and I find great force therein. I am of the view that when the solitary incident has been alleged against the petitioner that also of the offence for the muddammal of 60 bottles of Derby Special Whisky which is valued at Rs.24,000/-, 12 bottles of Macdole Whisky which is valued at Rs.4800/-, 1152 bottles of Aristrocrat Whisky Kwotaria which is valued at Rs.1,15,200/- and Qualis car

which is valued at Rs.4,00,000/-, it cannot be considered by any stretch of imagination that the petitioner is a bootlegger within the meaning of the provisions of the PASA Act.

9. I have considered the judgment of this Court in Special Civil Application No. 20420 of 2005 decided on 15.11.2005.

10. In view of the above, the petition is allowed. The order of detention dated 23.6.2005 is quashed and set aside. The detenu Govindraj Bhopalji Purohit is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

( K.M.MEHTA, J )

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